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Supreme Court, U.S.
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No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Respondents,

- against -

MATTHEW RAMMELKAMP,

Petitioner.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

THOMAS F. LIOTTI*
600 Old Country Road, Suite 530
Garden City, New York 11530
(516) 794-4700

Attorneys for Petitioner

DRUMMOND C. SMITH
On the Petition
August 27, 2008

* *Counsel of Record*

QUESTIONS PRESENTED

1. Whether or not there was an interstate commerce nexus with the alleged arsons is a threshold jurisdictional question which was never determined below.

2. There is no federal interest in the alleged arson of a residential property not used in interstate commerce pursuant to 18 *U.S.C.* §844(i) and the District Court erred when it refused to review the United States Attorney's Certification for compliance with 18 U.S.C. §5032.

3. The Petitioner, a 16 year old high school student at the time of his arrest and plea, did not understand his plea and sentence and furthermore the Petitioner's sentence was harsh and excessive and failed to take into account, the 18 *U.S.C.* §3553 factors.

PARTIES TO THE PROCEEDING

All of the parties to the proceeding are identified in the case caption.

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OPINIONS BELOW

The judgment and opinion of the Court Of Appeals, Second Circuit, was issued in a summary order filed on March, 19 2008. Rehearing was denied on May 27, 2008.

JURISDICTION

Subject matter jurisdiction of the United States District Court for the Eastern District of New York was purportedly conferred pursuant to the Petitioner's arrest on February 14, 2001 for violation of Title18 United States Code, Sections 844(i) and 844(n) in Suffolk County, Long Island, New York, which is part of the Eastern District of New York.

Appellate jurisdiction was purportedly conferred on the United States Court of Appeals for the Second Circuit pursuant to Title 18 United States Code, Section 3742 (a)(1).

Pursuant to 28 *U.S.C.* §2101 and Rule 13 of this Court, this petition for a Writ of Certiorari was filed within ninety (90) days after entry of the order denying discretionary review. The statutory provision believed to confer jurisdiction on this Court to review this Writ of Certiorari is 28 *U.S.C.* §1254(1).

STATUTORY PROVISIONS INVOLVED

18 *U.S.C.* §844(i):

"Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years, fined under this

title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment."

18 *U.S.C.* §844(n):

"Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense the commission of which was the object of the conspiracy."

18 *U.S.C.* §3553:

"(a) **Factors to be considered in imposing a sentence.** - The Court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider -

(1) the nature and circumstances of the offense and the history and characteristics of the defendant

(2) the need for the sentence imposed

(A) to reflect the seriousness of the offense, to promote respect for the law, and to

provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) To protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 *U.S.C.* §5032. **Delinquency proceedings in District courts; transfer for criminal prosecution**

A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorialjurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate District Court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009 or 1010(b)(1), (2), (3)), section 922(x) or section 924(b), (g), or (h) of this title, and that there is a substantial federal interest in the case or the offense to warrant the exercise of federal jurisdiction.

CONCISE STATEMENT OF THE CASE

The Petitioner, Matthew Rammelkamp, was a sixteen (16) year old high school sophomore at the time he pled guilty, in accord with a cooperation plea agreement which involved a plea to a one count information, charging Matthew with Conspiracy to Commit Arson in violation of 18 U.S.C. §§ 844(i) and 844(n).

As part of his cooperation agreement, the Petitioner acknowledged his minimal involvement in an environmental activist group named the EarthLiberation Front, ("ELF"). The Petitioner's involvement with ELF consisted of nothing more than viewing the group's website. The Petitioner never communicated with any actual ELF members. Petitioner testified at trial against his co-defendant's and received a 5K1.1 letter from the government for the substantial assistance he provided. One of his co-defendants was acquitted after trial.

The Petitioner has been interested in environmental conservation from a very young age and continues to focus his life around environmental conservation and preservation. This interest was brought keenly into focus when a member of his immediate family was diagnosed with cancer. This cancer was thought to be the result of living in a "cancer cluster" on Long Island. This diagnosis occurred immediately preceding the alleged arson and had a profound impact on the petitioner. Currently, the Petitioner is twenty two (22) years old and recently graduated from the State University of New York at Stony Brook. He was a dedicated and successful student with an interest in both natural and political sciences. In addition to being on the

Dean's list numerous semesters, the Petitioner is a member of the Golden Key International Honor Society, he was elected to the Senate of the Student Government and has received a Presidential Scholarship and an Academic Excellence Award.

In addition to his academic success, the Petitioner has been a paid employee at the New York Public Interest Research Group. ("N.Y.P.I.R.G."). N.Y.P.I.R.G. is a statewide public health, consumer protection and environmental lobby group. ThePetitioner joined N.Y.P.I.R.G. as an unpaid volunteer and was promoted to the paid position of Environmental Project Leader for Stony Brook University. The Petitioner was responsible for organizing entire communities on Long Island in support of statewide legislation to reduce fatal mercury emissions from New York State's coal-fired power plants. Since his arrest, the Petitioner has focused his efforts through organizations that achieve their goals through productive and legal means rather than radical groups who use intimidation on impressionable youths in order to commit illegal acts.

The Petitioner never imagined that his actions would lead to a federal prosecution. He pled guilty to what should have been a state arson prosecution. The Government never demonstrated that New York State did not have the available resources to both prosecute and rehabilitate the petitioner. Furthermore, Petitioner's alleged crime was not a crime of violence. If the Petitioner's case was prosecuted as a state crime, the Petitioner would have been eligible for Youthful Offender treatment since he was only sixteen (16) years old at the time of the alleged incidents.

Ultimately, the Government took advantage of post September 11th 2001, paranoia when it referred to the Petitioner as a terrorist and "cherry picked" this case, touting it as some sort of terrorism prosecution. The Petitioner is not a terrorist, nor was this alleged incident a terrorist attack. Terrorists look to instill fear in others by attacking crowded buildings, transportation systems or national landmarks. The September 11th 2001, attacks on the World Trade Center and the Pentagon and the April 19th 1995 attackon the Alfred P. Murrah Federal Building in Oklahoma City were terrorist attacks. These attacks killed thousands and caused billions of dollars in property damage. The sixteen year old Petitioner was only allegedly involved in damaging two unoccupied fully built residential houses. The total restitution is less than $200,000 and there were no injuries. Referring to the Petitioner as an "Eco-Terrorist" associates him with Osama Bin Ladin, and Timothy McVeigh when in reality the Petitioner was just an impressionable sixteen (16) year old high school sophomore upset that a family member was diagnosed with cancer, and cancer clusters on Long Island. He never intended to hurt a single person and never has.

SUMMARY OF ARGUMENT

The Circuit Court's denial of Petitioner's appal was purportedly based upon Petitioner's guilty plea. Petitioner contends, however, that his was no "garden variety" plea agreement. Not only did he offer substantial assistance to the Government in its prosecution of his co-defendants, but he was an immature sixteen (16) year old high school student at the time of plea and sentence, and he could not

comprehend the magnitude of the situation he found himself in.

Petitioner further contends that this Court's decision in *Jones v. U.S.*, 529 U.S. 848 (2000) and more recently the Second Circuit's interpretation of §844(i) in *U.S. v. Iodice*, 525 F.3d 179 (2008) wherein this Court's holding in *Jones*, *supra* that "the proper inquiry for acourt presented with a §844(i) charge is first to determine 'the function of the building itself, and then to determine whether that function affects interstate commerce." *Id.* At 183 is the proper inquiry and that as a result petitioner's certification under 18 U.S.C. §5032 was improper in the first instance. Had petitioner's certification been invalidated by the District Court based upon the improper use of §844(i), petitioner would have been prosecuted by New York State, the proper jurisdiction.

With respect to Petitioner's jurisdictional challenge, had the District Court reviewed the Government's certification of Petitioner under §5032 as requested by petitioner via motion and later on direct appeal, it would have concluded that it did not have jurisdiction and further that the Government's certification did not comport with the holding in *Jones* and *Iodice, supra.*

Although Petitioner contends that his jurisdictional challenge is a threshold issue and that once correctly determined this entire inquiry will become moot, in the alternative Petitioner also seeks to address his excessive sentence. Petitioner contends that the District Court did not properly take into account the circumstances of the case and the §5032 factors when it imposed a sentence involving incarceration.

REASONS FOR GRANTING THE PETITION

I. THE DISTRICT COURT DID NOT HAVE JURISDICTION OVER THE DEFENDANT OR THE CRIMES CHARGED

Initially, although raised below on several occasions, "a party may raise jurisdictional challenges any time during the proceedings." *Kipperman v. Academy Life Insurance Co.*, 1554 F.2d 377 (9th Cir. 1977), see also, *Friendship Hospital for Animals, Inc. V. District of Columbia*, 698 A.2d 1003, 1006 (D.C. 1997) and *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 116 S.Ct. 494 (1995). Furthermore, an action must be dismissed on appeal if jurisdiction is lacking. *Harmon v. Superior Court of California*, 307 F.2d 796 (1962). The District Court always has the power to dismiss for lack of jurisdiction. It can do so at any time that such lack of jurisdiction appears and on its own motion. See, *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 588, 59 S.Ct. 744 (1939).

Petitioner asserts and is supported by this Court's own decisional law that the interstate commerce requirement has been treated as a threshold jurisdictional question. *500 Gulf Oil Corp. V. Copp Paving Co.*, 419 U.S. 186, 202, 95 S.Ct. 392 (1974). Any failure to plead and prove the involvement of interstate commerce results in dismissal for lack of subject matter jurisdiction. *Red Apple Supermarket, Inc. V. Deltown Foods, Inc.*, 419 F.Supp. 1256 (S.D.N.Y. 1976)

Although raised below the District Court failed to dismiss Petitioner's case after it became apparent that the alleged arson did not have any nexus with interstate commerce. Not only did the District Court fail to dismiss the case, it approved the Government's certification under §5032 thereby permitting the Government to prosecute petitioner in Federal Court. Even more amazing, the District Court refused to hold a hearing on Petitioner's jurisdictional claims.

Put more simply, Petitioner's alleged arson did not involve structures contemplated by the majority in *Jones, supra.* As a consequence, the Government's certification of a juvenile who did not have a predicate crime of violence or any criminal record for that matter was in error. So too was the Court's jurisdiction over the matter, as there was no federal connection whatsoever. The lower court simply got it wrong with respect to jurisdiction. The Circuit's failure to address the jurisdictional argument was also in error.

II. THE ALLEGED ARSONS HAD NO INTERSTATE NEXUS AND THE GOVERNMENT'S CERTIFICATION DID NOT COMPORT WITH 18 *U.S.C.* §5032

The Petitioner was prosecuted pursuant to 18 U.S.C. §§ 844(i) and 844(n). § 844(i) states that "[w]hoever maliciously damages or destroys or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activityaffecting interstate or foreign commerce shall be imprisoned...." Section 844(n) creates a conspiracy under §844(i). In Mr.

Rammelkamp's situation, the alleged arson conspiracy did not have any documented affect on interstate commerce.[1] Only the two unoccupied fully built residential structures were damaged and these residential homes were located in non-populated areas. These houses were sold to individual buyers who planned to use the homes as their permanent residence, not commercial rental properties. The local duck farm and the local, independently owned and operated McDonald's were not damaged and furthermore, there was no conspiracy as demonstrated by the acquittal of Petitioner's co-defendant after trial on the very same charges. As such there was no nexus with interstate commerce in any of the alleged crimes, nor was any conspiracy ever demonstrated.

In its Summary Order, The Court of Appeals for the Second Circuit chose not to address the petitioner's substantive claims citing the Petitioner's guilty plea, rather the Court said that "[s]ince the `interstate commerce` element of the offense was alleged, the prosecution's need to prove that element was obviated by Rammelkamp's guilty plea." *See* Summary Order, Page 4. However, this was not an ordinary "garden variety" plea agreement, and the Circuit's decision hasleft several important constitutional issues unresolved. Not the least of which is the fact that the District Court lacked jurisdiction over these alleged arsons. This Court in *Jones v. United States*, 529 U.S. 848 (2000) held that

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[1] In *U.S. v. Lopez*, 514 U.S. 549 (1995), this Court held that the federal government is only able to regulate an activity if it has a substantial connection to interstate commerce. ("We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity `substantially affects` interstate commerce." *Id.* at 559.

"an owner-occupied residence not used for any commercial purpose does not qualify as property 'used in' commerce or commerce-affecting activity; arson of such a dwelling, therefore, is not subject to federal prosecution under § 844(i)." *Id.* at 850-51. The unoccupied fully built residential homes were not intended for any commercial purpose, they were to be exclusively used as primary residences and not as rental properties, thus eliminating any interstate nexus. It is axiomatic that because these unoccupied fully built residential homes had no connection to interstate commerce, the Petitioner was wrongly prosecuted under a federal statute and as a direct result the District Court did not have jurisdiction over Petitioner. Writing for the majority in *Jones*, Justice Ginsburg stated, "the key word is 'used'. Congress did not define the crime described in §844 as the explosion of a building where damage or destruction might affect interstate commerce." (Citing, *United States v. Mennata*, 639 F.2d 107, 110 (1981) "Congress required that the damaged or destroyed property must itself have been used in commerce or in an activity affecting commerce. The proper inquiry, we argue, is into the function of the building itself and then a determination of whether that function affects interstate commerce." (Citing, *United States v. Ryan*, 9 F.3d 660, 675 (1993). The alternative to that determination would be to run afoul of this Court's reasoning also contained in *Jones*. "Were we to adopt the Government's expansiveinterpretation of §844(i), hardly a building in the land would fall outside the federal statute's domain. Practically every building in our cities, towns and rural areas are constructed with supplies that have moved in interstate commerce, served by

utilities that have an interstate connection, financed or insured by enterprises that do business across state lines, bear some other trace of interstate commerce." *Jones*, *supra*. See also, *Pollack v. Hobbs*, 98 F.Supp.2d 287 (E.D.N.Y. 2000) and *U.S. v. Logan*, 419 F.3d 172 (2005), both further distinguishing §844(i) from petitioner's situation.

Furthermore, the Second Circuit recently acknowledged in *U.S. v. Iodice*, 525 F.3d 179 (2d Cir. 2008) that "[i]n that vein, we note that *Jones* concluded only that § 844(i) did not cover a private, owner-occupied, residential dwelling that served no commercial purpose whatsoever." *Iodice*, 525 F.3d at 183. Petitioner's alleged arson had no connection with interstate commerce and both the Government's certification and the District Court's alleged jurisdiction were plain error.

The Government's Certification of this Case Was Improper

This Court must also determine if the federal government is encroaching on the state's ability to define and enforce their own statutes without federal interference. This Court held in *Arizona v. Manypenny*, 451 U.S. 232, 242 (1981) that "it goes without saying that preventing crime is much more the business of thestates than it is of the Federal Government. Because the regulation of crime is pre-eminently a matter of the states, we have identified a `strong judicial policy against federal interference with state criminal proceedings." *Id.* at 242. Due to the fact that fully built and already sold residential homes have no impact on interstate commerce, the federal government is regulating outside its authority.

In *Hayle v. United States*, 815 F.2d 879 (2d Cir. 1987), the Court determined that "[i]n order to sustain a challenge to the District Court's jurisdiction, *the defendant who has pled guilty must* establish that the face of the indictment discloses that the counts to which he pleaded guilty failed to charge a federal offense." *Hayle,* 815 F.2d at 882; *See also: Palatucci v. Woodland*, 70 A.2d 674 (1950). Rammelkamp pled guilty to a jurisdictionally defective indictment, which had as its basis an alleged arson conspiracy of structures which were not being "used in" the stream of commerce pursuant to *Jones, supra.*

If anything, the Petitioner should have been prosecuted by New York State and the government's certification transferring the case to federal court should have been reviewed and set aside. The Petitioner more probably fell squarely within the purview of New York's Penal Law § 150.10, arson in the third degree as a class C-felony. New York defines arson in the third degree as "intentionally damaging a building or motor vehicle by starting a fire or causing an explosion. The lesser included offense would be attempted arson in the third degree, a class E felony. See §110 of Penal Law §150.10.

Arson is a State Crime

If prosecuted by the state, Petitioner could have employed the affirmative defense that the defendant had no reasonable ground to believe that his conduct might endanger the life or safety of another person or damage another building or motor vehicle. The alleged offenses were committed late at night on unoccupied buildings. The Petitioner knew

that the buildings were still unoccupied and therefore had no reasonable ground to believe that his conduct might endanger the life or safety of another person. Also, and of great importance, petitioner would have been eligible for New York State Youthful Offender treatment as he was a minor (between the ages of 16-19) with no criminal record at the time of the alleged incident.

III. THE PETITIONER WAS SIXTEEN (16) YEARS OF AGE AT THE TIME OF HIS ARREST AND DID NOT FULLY APPRECIATE THE CONSEQUENCES OF HIS GUILTY PLEA DUE TO HIS YOUNG AGE

Another issue raised by the Petitioner concerns the validity of his plea agreement. This Court should determine whether the Petitioner accepted his plea agreement with a "full understanding of the consequences." *Mabry v. Johnson,* 467 U.S. 504, 505 (1984); *Kercheval v. U.S.*, 274 U.S. 220, 233 (1927)(holding that a guilty plea cannot be sustained unless the record shows it was made voluntarily after proper advice and with the full understanding of the consequences). The Petitioner's guilty plea must be overturned because he could not have had a full understanding of the agreement's consequences due to his young age. The Petitioner's plea should be vacated and case should be remanded to state court for re-sentencing because at the time the agreement was signed, the Petitioner was an impressionable high school sophomore with a spotless criminal record who never imagined nor comprehended the severity of the plea agreement. The Petitioner did not understand that he was

relinquishing his right to be treated as a juvenile as well as the possibility of a civil disposition based upon a Youthful Offender disposition nor did he ever contemplate that he would lose that status.

The Petitioner was pressured into accepting the Government's plea agreement and was threatened by the prosecutor that if the Petitioner did not immediately enter into a plea agreement, the Petitioner would face a harsher sentence. As a high school sophomore he had a very limited knowledge of the criminal justice system and was threatened with perpetual incarceration if he did not accept the Government's offer. Had the Petitioner been aware that he was giving up his right to be treated as a juvenile offender and the consequences for doing so, the Petitioner would not have accepted the Government's offer[2].

Clearly the Petitioner did not have a complete understanding of the agreement's consequences. The Fourth Circuit has held that "[i]n order to plead voluntarily, a defendant must know the direct consequences of his plea, including the actual value of any commitments made to him" *Hammond v.*

[2] Under New York law the defendant would have been eligible for Youthful Offender treatment and would have beenlikely to receive it. Youthful Offender status then converts the criminal charge to a civil disposition which means that the Youthful Offender has no criminal record *per se*. As a result he is not stigmatized for the rest of his life. The prosecutor threatened him with a harsh sentence and said that he would oppose bail if the defendant did not take the plea and "cooperate". Not only did the federal government unconstitutionally arrogate jurisdiction and power to itself, but it then further abused that power. The defendant's case was also assigned to Judge Thomas C. Platt who had a reputation for being a harsh sentencing judge. The prosecutor gleefully seized on that perception to further intimidate the young, impressionable defendant.

United States, 528 F.2d 15 (4th Cir. 1975). Accepting an invalid plea agreement is a violation of Petitioner's due process rights. Also in *Mabry,* this Court held that "[i]f a defendant was not fairly appraised of its consequences, his guilty plea can be challenged under the Due Process Clause." *Mabry,* 467 U.S. at 505.

IV. THE SENTENCING COURT'S FAILURE TO ADEQUATELY UTILIZE 18 *U.S.C. §3553* RESULTED IN A HARSH AND EXCESSIVE SENTENCE

A fourth issue raised by the Petitioner is in respect to the sentence he received pursuant to his invalid plea agreement. The Petitioner was sentenced to a harsh and excessive six (6) months of federal incarceration. 18 U.S.C.A. § 3553 requires a sentencing court to consider certain factors such as the nature of the offense, the history of the defendant and the need for a particular sentence before sentencing a criminal defendant. Despite commenting that it considered § 3553 before sentencing the Petitioner, it is clear that the District Court did not take § 3553 into account before sentencing the Petitioner as six (6) months of federal incarceration is an excessively harsh sentence under the circumstances.

18 U.S.C.A. § 3553(2)(a)-(d) requires the court to consider the need for the sentence imposed: (a) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (b) to afford adequate deterrence to criminal conduct; (c) to protect the public from further crimes of the defendant; and (d) to provide

the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

A careful review of 18 U.S.C.A. §§ 3553(2)(a)-(d) demonstrates that any period of incarceration for petitioner is excessive. The crime charged does notindicate that anyone was injured or that the Petitioner attempted to injure anyone. In point of fact, the Petitioner took extraordinary steps to ensure that there was no threat to human life. Any alleged damage was caused to still unoccupied structures late at night.

18 U.S.C.A. § 3553(2)(a) refers to a sentence that imposes a just punishment for the offense, however in this case, incarceration is not necessary to provide just punishment for the offense. Nor does the Petitioner require incarceration to gain respect for the law. As stated *supra*, since the time of the incident over 7 ½ years ago, the Petitioner has achieved incredible academic success at the undergraduate level and has been promoted several times by N.Y.P.I.R.G., graduating with honors from the State University of New York at Stony Brook. The Petitioner has personally borne the cost of his legal defense. He has been ostracized by many members of his community, he has lost the love and respect of his family members. He is also currently awaiting a decision by the District Court with respect to possible restitution. Presently, the Petitioner is entirely responsible for the restitution figure which exceeds $188,000.00[3]. The Petitioner will be dealing with the effects of this prosecution for

[3] A restitution hearing involving apportionment of loss amongst all co-defendants is currently pending. The defendant is still at liberty pending this application. The issue of jurisdiction will again be raised at the restitution hearing.

the foreseeable future. Rebuilding relationships, and paying off legal bills and his share of the restitution may consume the remainder of his life. Any period of incarceration will only stall his efforts to repair his life.

18 U.S.C.A. § 3553(2)(b) requires the sentencing court to consider whether incarceration is necessary to afford adequate deterrence to criminal conduct. Here, the Petitioner was nothing more than an impressionable sixteen (16) year old who was used as a tool by older radicals, one of whom was found not guilty after trial, who used their status and peer pressure to brainwash the Petitioner. Any period of incarceration is unlikely to accomplish anything other than placing the Petitioner in a facility with hardened criminals who will potentially corrupt the Petitioner.

18 U.S.C.A. § 3552(c) requires the sentencing court to consider the need to protect the public from further crimes of the defendant. The Petitioner has learned from his mistakes and is not a threat to the public. Incarceration would thwart the Petitioner's promising future and the Petitioner is well aware that any future criminal involvement would negate his current success.

18 U.S.C.A. § 3552(d) further requires the sentencing court to consider whether incarceration would provide the Petitioner with needed educational or vocational training, medical care, or other correctional treatment. As stated above, the Petitioner has achieved enormous academic success and is planning on attending law school as soon as his appeal is determined. The Petitioner has been employed by the New York Public Interest Research Group (N.Y.P.I.R.G.) and was promoted several times. The Petitioner does not need any medical or

psychological care. Any period of incarceration will only stall the Petitioner's academic career pursuits.

CONCLUSION

It is respectfully submitted that this Court grant *certiorari* and reverse the judgment of the Second Circuit because it is clear that the alleged arson had no nexus with interstate commerce and therefore the District Court was without subject matter jurisdiction. In addition, the judgment of the Second Circuit should be reversed because the Petitioner never would have accepted the government's plea agreement if he was aware that he was giving up his Youthful Offender status under New York State Law. Therefore the agreement was not made with a complete understanding of the consequences. Lastly, this Court should grant the Petitioner's prayer for a *writ of certiorari* and reverse the judgment of the Second Circuit because the District Court's sentence was excessive and clearly in violation of 18 U.S.C.A. § 3553.

Respectfully submitted,

THOMAS F. LIOTTI
Counsel of Record

On the Petition:

Drummond C. Smith, Esq.

August, 2008

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 19th day of March, two thousand and eight.

Present: HON. BARRINGTON D. PARKER
HON. DEBRA ANN LIVINGSTON
Circuit Judges
HON. JANET C. HALL [1]
District Judge.

----------X

United States of America,

Appellee,

SUMMARY ORDER

-against-

No 06-4259-cr

Matthew Rammelkamp,

Defendant-Appellant.

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[1] The Honorable Janet C. Hall of the United States District Court for the District of Connecticut, sitting by designation.

For *Appellant*: Thomas F. Liotti (Drummond C. Smith, on the brief), Law Offices of Thomas F. Liotti, Garden City, NY.

For Appellee: James G. McGovern (David C. James, on the brief) Assistant United States Attorney for Roslynn R. Mauskopf, United States Attorney for the Eastern District of New York.

UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED AND DECREED that Defendant-Appellant's appeal is DENIED in part and GRANTED in part.

Appellant Matthew Rammelkamp appeals from a decision of the United States District Court for the Eastern District of New York (Platt, J.). We assume the parties' familiarity with the underlying facts and the procedural history of the case, as well as the issues on appeal. In February, 2001, Rammelkamp, then sixteen years of age, pled guilty to conspiracy to commit arson in violation of 18 U.S.C. §§844(i) and (n). By his guilty plea, Rammelkamp admitted his involvement in a conspiracy to commit arson against a number of targets, including two partially constructed housing developments, a duck farm, a McDonald's restaurant, and two construction vehicles. He also admitted his affiliation with the Earth Liberation Front.

After cooperating with the government and testifying at the trial of one of his conspirators, the government filed a motion pursuant to 18 U.S.C.

§3553(e) and U.S.S.G. §5K1.1 informing that Rammelkamp had provided substantial assistance. He was sentenced in September 2006 to six months of incarceration at a prison camp and $188,312.40 in restitution. Were it not for the departure authorized by §5K1.1 and §3553(e), Rammelkamp would have faced a Sentencing Guideline range of 63-78 months and a statutory minimum of five years imprisonment. On appeal Rammelkamp challenges the jurisdiction of the federal government over his alleged crimes, the validity of his plea, the district court's decision to accept the United States Attorney General's certification under 18 U.S.C. §5032 that this case was appropriate for prosecution in federal court, the reasonableness of his sentence and the restitution imposed by the district court.

DISCUSSION

18 U.S.C. §844(i) subjects to federal prosecution anyone who "maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property *used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce*" (emphasis added). Rammelkamp argues that the arson conspiracy he pled guilty to fell outside of federal jurisdiction under *Jones v. United States*, 529 U.S. 848 (2000), which held that "an owner-occupied residence not used for any commercial purpose does not qualify as property 'used in' commerce or commerce-affecting activity; arson of such a dwelling, therefore, is not subject to federal prosecution under §844(i)." *Id.* At 850-51. While Rammelkamp's argument would likely fail on its

merits, both because the arson conspiracy encompassed distinctly commercial property (e.g., a McDonald's restaurant) and because the commercial developer was still responsible for the partially constructed houses, we do not reach the issue because of Rammelkamp's guilty plea.

We explained the effects of a guilty plea on jurisdictional issues such as the ones Rammelkamp raises in *Hayle v. United States*, 815 F.2d 879 (2d Cir.1987):

> In order to sustain a challenge to the district court's jurisdiction, the defendant who has pleaded guilty must establish that the face of the indictment discloses that the count or counts to which he pleaded guilty failed to charge a federal offense. The requirement that the alleged jurisdiction defect be apparent from the face of the indictment reflects the line between issues that go to the court's power to entertain the prosecution and those that go merely to the government's ability to prove its case. If the indictment alleges all of the statutory elements of a federal offense and the defendant's contention is that in fact certain of those elements are lacking, the challenge goes to the merits of the prosecution, not to the jurisdiction of the court to entertain the case or to punish the defendant if all of the alleged elements are proven. *Id.* at 81-82

(internal citations and quotations omitted).

The information alleged that Rammelkamp conspired to "damage and destroy by means of fire buildings and other real and personal property used in activities affecting interstate commerce." Since the "interstate commerce" element of the offense was alleged, the prosecution's need to prove that element was obviated by Rammelkamp's guilty plea. *See id.* Therefore, Rammelkamp's jurisdictional challenge fails.

There is no basis for Rammelkamp's assertion that his guilty plea should be vacated because he did not make his plea "knowingly, voluntarily and intelligently" or with "a true understanding of the direct consequences." During his plea hearing, Rammelkamp filed a "Juvenile Request to Be Proceeded Against as an Adult" ("Juvenile Waiver Request") in which he voluntarily requested to be prosecuted as an adult. The Juvenile Waiver Request was signed by Rammelkamp his attorney, and his parents. Furthermore, both Rammelkamp and his counsel averred in open court that Rammelkamp understood all charges against him and the consequences of his plea. Rammelkamp and his counsel also confirmed Rammelkamp's competence.

The district court's refusal to invalidate the United States Attorney General's certification under 18 U.S.C. §50322 that this case was appropriate for

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[2] Section 5032 forbids the United States from prosecuting a juvenile (save for those crimes committed within the special maritime and territorial jurisdiction of the United States for which the maximum term of imprisonment does not exceed six months)

prosecution in federal court was correct. No evaluation of the Attorney General's certification under §5032, aside from its facial compliance with §5032's requirements, is permissible. See *United States v. Doe*, 49 F.3d 859, 866-67 (2d Cir. 1995) (determining that conspiracy to commit robbery and extortion was properly considered a crime of violence under §5032); *United States v. Vancier*, 515 F.2d 1378, 1381 (2d Cir. 1975) ("We conclude that the certification called for by §502, 18 U.S.C. §5032 (Supp. 1975), also falls into the category of unreviewable determinations to be made, in this instance, by the Attorney General.") Here, the Attorney General's certification is facially valid, as the Attorney General identified the felony crime at issue as one of violence and asserted a federal interest. Therefore, the district court's refusal to invalidate the United States Attorney General's certification under 18 U.S.C. §5032 that this case was

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"unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the States does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841) or section 1002(a), 1003, 1005, 1009 or 1010(b)(1), (2) or (3) of the Controlled Substance Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)), section 922(x) [18 USCS §922(x)] or section 924(b), (g) or (h) of this title [18 USCS §924(b), (g), or (h)], and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction."

appropriate for prosecution in federal court was correct.

Rammelkamp complains that his sentence was unreasonable and asserts that the district court failed adequately to consider the factors listed in 18 U.S.C. §3553. We disagree. Our substantive reasonableness review requires only that we consider whether the length of the sentence is reasonable in light of the §3553(a) factors. *United States v. Crosby*, 397 F.3d 103, 113-115 (2d Cir. 2005). The district court imposed a sentence of six months incarceration on Rammelkamp, far below his uncontested Guidelines range of 63-78 months and there is no indication from the record that the District Court failed to consider the requisite §3553(a) factors.

Therefore, we affirm the sentence imposed by the district court. See *United States v. Fernandez*, 443 F.3d 19, 30 (2d Cir. 2006) ("[W]e presume, in the absence of record evidence suggesting otherwise, that a sentencing judge has faithfully discharged her duty to consider the statutory factors.")

As to the restitution imposed by the district court, the government candidly concedes that, since "the district court was apparently under the mistaken impression that it was required to impose restitution in the full amount of loss caused by the conspiracy and did not exercise its discretion whether to apportion the restitution amount, the restitution order should be vacated and the case remanded for reconsideration of the restitution order." We agree.

For the foregoing reasons, the district court's judgment is AFFIRMED except as to the amount of restitution, which we REMAND to the district court

for reconsideration of the appropriate amount of restitution in light of this Ruling.

FOR THE COURT

Catherine O'Hagan Wolfe,
Clerk of the Court

By:_____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of May, two thousand and eight.

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United States of America,

Appellee,

ORDER

-against-

No 06-4259-cr

Matthew Rammelkamp,

Defendant-Appellant.

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Matthew Rammelkamp having filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*, and the panel that determined the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing *en banc*,

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT
Catherine O'Hagan Wolfe,
Clerk of the Court
By:_____
Frank Perez, Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Central Islip Division

UNITED STATES OF AMERICA

vs.

MATTHEW RAMMELCAMP

Case Number 01 CR 158-1

JUDGMENT IN A CRIMINAL CASE

The Defendant Pleaded Guilty to count one of a single count information.

The Defendant is adjudicated guilty of these offenses: 18 USC 844 (I) and 844 (n) Conspiracy to Commit Arson, a Class C Felony

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Date of Imposition of Sentence: September 1, 2006

THOMAS C. PLATT
UNITED STATES DISTRICT JUDGE
DATE: September 5, 2006

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of SIX (6) MONTHS.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

Before 2 p.m. 10 days after the defendant graduates from college in January 2007. If the defendant is not designated within the given time frame he/she should surrender to the Marshals office in Brooklyn. If the defendant has not already done so at the time of sentence he/she should communicate with the Marshals office to obtain information regarding the procedures for voluntary surrender.